

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7637 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NATUBHA G CHUDASHMA

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
SERVED BY RPAD - (R) for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 19/02/99

ORAL JUDGEMENT

The petitioner has preferred this writ petition under article 226 of the Constitution of India in which he has challenged the detention order dated 13.7.98 passed by the District Magistrate, Bhavnagar under Section 3(2) of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act.

2. The brief facts are that the petitioner was

working as Manager on the petrol pump running in the name of Ramdev Petroleum Adhelai at Adhelia village of Bhavnagar Taluka. A surprise inspection was done by the authorities of Supply Department on 9.4.98. Irregularities were found. Shortage of density in diesel was found and difference in stock of diesel was also found. Sample of diesel was collected and it was sent for examination by Forensic Science Laboratory, Ahmedabad. The report of the Forensic Science Laboratory was received showing that the sample of diesel was not as per the prescribed norms and difference in density was also noted. Adulteration was reported in the sample collected from the petrol pump of the owner which was managed by the petitioner as Manager. In the grounds of detention, it is further mentioned that another surprise inspection was made on 30.6.98 and similar discrepancies were noticed. Consequently the impugned order of detention was passed.

3. The detention order has been challenged on several grounds, but it is not necessary to deal with all the grounds because on one ground alone the petition can be finally disposed of.

4. The said ground is that the representation dated 3.9.98 sent by the Advocate of the detinue to the Detaining Authority though received by the Detaining Authority on 4.9.98 was not forwarded to the State Government. Learned Counsel for the petitioner contended that this representation was forwarded to the State Government on 10.9.98 and there was 6 days delay in forwarding the representation for which there is no explanation from the side of the State Government. However, this contention seems to be misconceived. When the material was examined, it was found that vague counter affidavit was originally filed by the Detaining Authority and in para 9, it was deposed that the representation dated 3.9.98 was replied to the detinue on 10.9.98 through Jail Authority, Baroda and a copy thereof was sent to the State Government. This para is totally confusing. There is no categorical admission that the representation of the detinue sent through his advocate was ever forwarded to the State Government on 10.9.1998. Additional counter affidavit of the detaining authority has been filed today which is equally vague. This also does not disclose whether the said representation was forwarded to the State Government and if so when. Learned AGP was asked to intimate the Court from the record as to whether the representation dated 3.9.98 was actually forwarded to the State Government or not and if so the date on which it was forwarded to the State

Government. He was also desired to communicate to the court the contents of the information and intimation sent by the Detaining Authority to the detainee through Jail Authority. The Learned AGP intimated that the intimation sent by the Detaining authority to the detainee through Jail Authority was that the detention order was passed after considering everything and it requires no revocation. He further intimated that as per record only copy of this intimation alongwith copy of representation was sent to the State Government.

5. From the above information furnished by the learned AGP two things are manifestly clear. The first is that the representation dated 3.9.98 was never forwarded by the Detaining Authority to the State Government for appropriate action. The second thing which emerges from the above information is that the Detaining Authority had taken a decision that there was no necessity to revoke the detention order. Annexure C to the writ petition is the copy of the representation dated 3.9.98 in which on the grounds mentioned therein specific prayer was made that the detention order passed against the detainee be revoked forthwith. It may be mentioned that the detention order was passed on 13.7.98. The State Government approved the detention order on 20.7.98 which is admitted in Para 2 of the counter affidavit of Shri P.R.Shukla, Dy. Secretary, Government of Gujarat. The detention order was approved by the State Government on 20.7.98, which is admitted in Para 2 of the counter affidavit of Shri P.R.Shukla, Dy. Secretary to the Government of Gujarat. If the detention order was approved by the State Government on 20.7.98, the Detaining Authority had no jurisdiction to consider the representation dated 3.9.98. He took decision on the representation and rejected the same. It's intimation was given to the detainee which was action without jurisdiction and the same is nullity in the eyes of law. If the State Government was intimated of this decision of the Detaining Authority that was totally a redundant exercise. The representation was never forwarded to the State Government on 10.9.98. As such on this ground itself the detention order is rendered illegal and invalid. If the representation was not forwarded to the State Government, the necessary corrolary is that the representation of the detainee dated 3.9.98 has not been disposed of by the State Government so far. This is an other ground for quashing the detention order.

6. For the reasons stated above, the detention order cannot be sustained. The writ petition therefore succeeds and is thereby allowed. The impugned detention

order dated 13.7.98 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

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